

DEC 29 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EMERSON BOYD AUSTIN,

Defendant - Appellant.

No. 07-10198

D.C. No. CR-05-00485-SMM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted December 17, 2008^{**}

Before: GOODWIN, WALLACE, and TROTT, Circuit Judges.

Emerson Boyd Austin appealed from his jury-trial conviction and
600-month sentence for aggravated sexual abuse, in violation of 18 U.S.C. §§
1153, 2241(a), and 2246(2)(A) and (2)(D), and sexual abuse of a minor, in

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. §§ 1153, 2243(a) and 2246(2)(A).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Austin's counsel filed a brief stating there are no grounds for relief, along with a motion to withdraw as counsel of record. Austin filed a pro se supplemental brief and a pro se motion to appoint new counsel. No answering brief has been filed.

The record indicates that Austin is now deceased. Therefore, counsel's motion to withdraw is **GRANTED**, Austin's pro se motion to appoint new counsel is **DENIED**, and we dismiss the appeal as moot.

DISMISSED.